

# Exhibit 10

**City of Santa Fe vs. Purdue Pharma LP, et al.  
D-101-CV-2019-01809**

**Date:** May 13, 2020

**TELEPHONIC STATUS CONFERENCE**

LOUGHREN COURT REPORTING  
110 Second Street, S.W., Ste 602  
Albuquerque, New Mexico 87102  
505-243-9858

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STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT COURT

No. D-101-CV-2019-01809

CITY OF SANTA FE,

Plaintiff,

vs.

PURDUE PHARMA, L.P., et al.

Defendants.

TRANSCRIPT OF PROCEEDINGS  
TELEPHONIC STATUS CONFERENCE  
BEFORE THE HONORABLE BRYAN BIEDSCHEID  
NEW MEXICO DISTRICT COURT JUDGE  
Wednesday, May 13, 2020

APPEARANCES:

For the Plaintiff: SHERRI ANN SAUCER  
FEARS NACHAWATI, PLLC

For Defendant Endo Health Solutions: JOHN B. POUND  
JOHN B. POUND, LLC

For Defendants McKesson: LARRY D. MALDEGEN  
MALDEGEN, TEMPLEMAN & INDALL, LLP

NATHAN SHAFROTH  
COVINGTON & BURLING, LLP

For Defendant Walgreens: MARK T. BAKER  
PEIFER, HANSON, MULLINS & BAKER, P.A.  
LESTER C. HOUTZ  
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Transcribed by: MARY K. LOUGHREN, CRR, RPR, NM CCR #65

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1                   (Court in session at 10:27 A.M.)

2                   \* \* \* \* \*

3                   THE COURT: The Court calls the matter of the City  
4                   of Santa Fe vs. Cephalon, Inc., et al. Case No.  
5                   D-101-CV-2019-01809. We are here for the purpose of a status  
6                   conference.

7                   Just to make sure everyone is aware that I do  
8                   recognize jurisdictional and other authority limitations, I'm  
9                   not making any substantive rulings today. But the reason I  
10                  asked you all to participate in this conference is because  
11                  about the time that I started receiving e-mails and other  
12                  communications from counsel in a matter that, by my  
13                  understanding and from my perspective had been removed from my  
14                  court and was stayed, it seemed that the best course of action  
15                  was for me to get a little input from counsel and make sure  
16                  that I am not failing you in some fashion and I'm not becoming  
17                  an irritating bottleneck, if I can avoid being that, because I  
18                  certainly strive to avoid that.

19                  So with that, if I could hear from counsel for City  
20                  of Santa Fe about your ideas on what I should be doing, or have  
21                  failed to do, or whatever is appropriate for me to know, you  
22                  may go. And then I'm going to want to hear from maybe not  
23                  every counsel for every defendant, or else we'll be here for  
24                  quite some time, but at least if you've got any representatives  
25                  from defendants that you would like me to hear from, I'll want

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1 to hear that, too. So counsel.

2 MS. SAUCER: Thank you, Your Honor. Ann Saucer for  
3 the City of Santa Fe.

4 THE COURT: Thank You.

5 MS. SAUCER: Your Honor, the City of Santa Fe --  
6 thank you, Judge Biedscheid. We respectfully ask that the  
7 Court write a letter to Ohio --

8 THE COURT: Okay, just one second, Ms. Saucer. Do  
9 you have a volume on your computer there? Something is just  
10 not quite coming through very clearly on this end.

11 MS. SAUCER: Does it help if I'm closer?

12 THE COURT: Why don't you say something now, and my  
13 Court Monitor will tell me if she's able to get you on the  
14 record or not.

15 MS. SAUCER: Ann Saucer for the City of Santa Fe.

16 THE COURT: Okay. Well, please just be close and  
17 speak as loudly as you can, and we'll try to overcome our  
18 technological impediments here. Please continue, and sorry for  
19 the interruption.

20 MS. SAUCER: The City asks that Your Honor write a  
21 letter to Ohio Federal Judge Polster asking that he return the  
22 City's case to Your Honor's court, the Court that has subject  
23 matter jurisdiction over the claim.

24 In order to address the manmade epidemic of opioid  
25 abuse, addiction, overdose and death, the City filed a public

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1 nuisance action in state court in Your Honor's court. There is  
2 no authority whatsoever from New Mexico, or any persuasive  
3 authority elsewhere, that says that when a governmental entity  
4 files a case to abate a single public nuisance, that somehow  
5 the case needs to be split up into two different cases, and  
6 indeed two different jurisdictions. Nonetheless, that was the  
7 reason for removing.

8 When the defendants removed the case from Your  
9 Honor's court to federal court, the City of Santa Fe fought  
10 hard. We filed remand motions, motions to expedite, reply  
11 briefs, and we opposed the stay, and we lost all of that. As a  
12 result, the case was transferred to Ohio. We understand from  
13 statements made by the Endo defendants in a different  
14 New Mexico court that the way to get the case back is to have  
15 the state court judge send a letter to Judge Polster. That was  
16 somewhat surprising to me, but we searched the thousands of  
17 docket entries and found two letters. Your Honor, thank you  
18 very much for taking the time to read them.

19 The Court is correct that there is a coordination  
20 element assessed in those letters under Pennsylvania and  
21 Missouri law that does not have a parallel in New Mexico.  
22 However, there are other reasons provided in those letters by  
23 the Pennsylvania and Missouri judges to Judge Polster that do  
24 apply in Santa Fe.

25 Briefly, we are happy to submit everything I'm about

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1 to say to the Court in the form of a proposal, a written  
2 proposal, if the Court would like. If I may try to highlight  
3 the four points that were made in those letters that could also  
4 be made by Your Honor.

5 THE COURT: Before we even get to the four points,  
6 let me just ask, I'm still new enough at this job that every  
7 time I feel comfortable in it, then there is a proposal to do  
8 something that I've not experienced before. So with that  
9 admission, I am not accustomed to writing letters to other  
10 judges asking them to do things. Typically a party in a case  
11 files a motion, and the judge does something in the other case  
12 that gets that case back to me. So why is it that that feature  
13 or process wouldn't work in this case where you would go to  
14 Judge Polster and say, we think that the New Mexico court  
15 should be able to proceed in this matter, please send it back,  
16 and that judge would make that decision, versus me writing a  
17 letter saying please do that?

18 MS. SAUCER: Your Honor, first off, we agree with the  
19 Court that this is unusual. The reason why we cannot ask  
20 Judge Polster himself is because he will not allow it. In  
21 Footnote 4 to the letter that we wrote Your Honor -- and again,  
22 we thank you, Judge Biedscheid, for taking the time with us --  
23 we quote two of the orders that Judge Polster signed forbidding  
24 cities and counties. Now, notably he's made an exception for  
25 state remand motions. But he will not allow the City to file

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1 anything.

2 Now, we can try -- I will tell Your Honor that I also  
3 represent some counties in Texas that just tried to file a  
4 motion for leave to file something, just asking that the JPML  
5 remand the case, and that was immediately denied within a  
6 couple of days by Judge Polster in a docket entry with no  
7 reason. And that was just a motion for leave to file  
8 something, asking if we could ask the JPML something. So when  
9 this was pointed out in another New Mexico court, Endo's  
10 counsel said that it was false, false and misleading,  
11 extraordinarily misleading, demonstrably false -- there was  
12 another adjective; I think extraordinarily disingenuous,  
13 something like that -- for me to say that we're not allowed to  
14 file a remand in order to get a case back, and he said that  
15 Missouri got a case back and that's an example of how a case  
16 can be returned.

17 So pursuant to those statements made, we're asking,  
18 Your Honor, we're asking Your Honor to write a letter, because  
19 when we researched this, indeed, in response to those two  
20 letters, Judge Polster sent those cases back. Why is the  
21 letter writing exercise appropriate? I don't know, honestly.

22 In our last footnote to the Court, we quoted Title 28  
23 United States Code Section 1447, Subsection C, which says that  
24 it's the responsibility of the federal court, the word shall  
25 was used by Congress, to return the case to state court. So

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1 why a letter by the state court judge to the federal court is  
2 necessary, I don't know. I'm just saying this is where we are  
3 now.

4 And this is a very grave problem. Santa Fe is a  
5 high-intensity drug trafficking area. The current crisis has  
6 only exacerbated the existing problems and challenges facing  
7 the City in trying to address this manmade public health opioid  
8 crisis. It's very important to the City, and so we are doing  
9 everything that we can.

10 THE COURT: All right. Thank you. Anything further  
11 that I should know about that request?

12 MS. SAUCER: If I may, just super briefly, and just  
13 cut me off if I'm talking too long, the four main points made  
14 in those letters that can be made by the Court are:

15 The gravity of the harm. That was particularly  
16 stated in the Missouri letter;

17 The ability of the plaintiffs to represent the  
18 population. That is certainly true in Santa Fe. It's a unique  
19 tri-cultural city that is representative democratically of the  
20 population;

21 The importance of timeliness. Timeliness was a point  
22 made in both of those letters;

23 And finally, the reasonableness of the Court. And I  
24 can put those reasons in writing. I can expand upon them more  
25 if the Court wants me to.

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1                   THE COURT: Okay. Obviously I'm going to hear from  
2 counsel for the defendants, as well, but again, as I understand  
3 my job to be not advocating for one side or the other, but  
4 rather trying to properly administer and apply the rules so  
5 that things are decided fairly, you know, how likely is it that  
6 you would come up with a letter that contains statements like  
7 the gravity of the harm caused by the defendants is so great  
8 that you should remand this to me because I'm a great judge and  
9 you should trust me to do this properly, and have the  
10 defendants view that as a reasonable statement as to what  
11 they've done and a reasonable characterization of the case,  
12 that it doesn't unfairly favor you?

13                  MS. SAUCER: Well, that's an excellent point, Your  
14 Honor. A statement was made in the Missouri letter about the  
15 gravity of opioids on the criminal docket. If the Court feels  
16 that Judge Rex Burlison -- he's an excellent judge in  
17 St. Louis, Missouri -- went too far in making that statement,  
18 then exclude it. We are asking for a letter. I really  
19 believe, Your Honor, that we cannot fail to take any action to  
20 be able to move this case, given the gravity of the harm. And  
21 if the Court believes that that type of statement is  
22 inappropriate, don't put it in.

23                  A statement that the City of Santa Fe is asking me to  
24 write this letter, I have the ability to try this case, just a  
25 very -- you know, if less is more, then we would be thrilled to

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1 have the Court write that letter with whatever language the  
2 Court is comfortable with. It would be great. Just a letter  
3 to Judge Polster saying less or more.

4 But many of the points made in these letters could  
5 also be made here. If the Court is uncomfortable with the  
6 gravity of the harm, then that doesn't need to be in the  
7 letter. But simply a statement that -- how about timeliness of  
8 management. That's a phrase used in both of these letters,  
9 that the Court can, in a timely fashion, address these claims.  
10 And the ability of the Court to address these claims. Those  
11 are mutual statements that we believe the Court can make in  
12 reaching out to Judge Polster.

13 THE COURT: Okay. Thank you, that helps me out.

14 Is there counsel for a defendant that would like to  
15 take a crack at illuminating my understanding from the  
16 defendants' perspective?

17 MR. POUND: Yes, Your Honor. This is John Pound.  
18 I'm going to be the lead-off batter, anyway, and I'll try to be  
19 brief.

20 I've heard what the Court has said, and I want to say  
21 this first, just for the record, because the Court has already  
22 made it clear that it understands our objections to the idea  
23 that the Court has any jurisdiction even to be holding this  
24 status conference. So we are appearing especially and want to  
25 preserve on the record our contention that, to put it in plain

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1 English -- I don't know what we're having here, but in our  
2 opinion, because the Court has no jurisdiction over the case  
3 we're talking about, this isn't even really a status  
4 conference. There's no animal in the law that I know of that  
5 has a label that you can put on this phone call that we're  
6 having with each other this morning.

7 But let me do this, and I will be brief. I think it  
8 might be of some help just to quickly go over some of the  
9 chronology here to help put things in perspective.

10 The case was filed -- the case we're talking about  
11 was filed in your court on November 26, 2019. Well, actually,  
12 before that. It was removed to the federal court on  
13 November 26, 2019. At that point in time, and I won't beat a  
14 dead horse here, I think we all understand from the law that at  
15 that point in time, that day, this Court lost jurisdiction over  
16 the case under 12 U.S.C. Section 1446.

17 On the 9th of December 2019, the plaintiff, as  
18 Ms. Saucer says, filed a motion to remand. That motion was  
19 fully briefed, by the way, by the 6th of January 2020, my  
20 point being that it was up and ready for determination by the  
21 federal court in New Mexico as of early January. Prior to  
22 that, though, on the 10th of December 2019, the Judicial  
23 Panel on Multidistrict Litigation conditionally transferred the  
24 case to the MDL litigation in the United States District Court  
25 for the Northern District of Ohio.

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1                   On the 11th of February 2020, Judge Ken Gonzales  
2 granted the defendants' motion to stay all proceedings, his  
3 words, "pending likely transfer to multidistrict litigation."  
4 On the 30th of March 2020, the United States District Court in  
5 New Mexico transferred the case to the United States District  
6 Court for the Northern District of Ohio for coordinated or  
7 consolidated pretrial proceedings pursuant to the Federal  
8 Statute 28 U.S.C. Section 1407.

9                   Now, on April the 21st of this year, Ms. Saucer --  
10 I hope I'm pronouncing your name correctly -- Ms. Saucer wrote  
11 a letter to you. In that letter, she asked you to assist the  
12 plaintiff in seeking to persuade Judge Polster to remand this  
13 case from the MDL court in Ohio. In other words, she was  
14 asking, to put it in plain English, she was asking for special  
15 treatment for her client in what is a nationally coordinated  
16 and consolidated matter, which precisely, of course, marchs  
17 against the very reason why the MDL procedure exists, as was  
18 pointed out, I might add, when the judge in New Mexico granted  
19 the defendants' motion to stay.

20                  In her letter to you, Ms. Saucer characterized  
21 something that Mr. Puig, who is my colleague representing Endo,  
22 had said in answer to a question Judge Browning put to him in a  
23 hearing that was being held in the City of Albuquerque case.  
24 In answering Judge Browning's question -- and if you'll bear  
25 with me, I'm going to read just a snippet from that for you

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1 here -- it was obvious and clear that, number one, Mr. Puig was  
2 responding to a question put to him by a judge. We all know,  
3 of course, that we owe candor, that we have an obligation of  
4 candor to the tribunal whenever we're asked a question by a  
5 judge. But let's put this in the right perspective here.  
6 Here's what the Judge said, and I'm reading starting on Page 81  
7 of that transcript.

8                 Judge Browning says: "Has he granted some  
9 remand motion?" He's speaking of Judge Polster.

10                "MR. PUIG: Yes."

11                "THE COURT: There have been a few? And can  
12 you tell me what the character of those were?"

13                "MR. PUIG: Sure. He's both denied and  
14 ordered remands, so he's bone both things. He's  
15 taken up remand issues."

16                Judge Browning: "Is that about three motions  
17 that he's done?" Then skipping some material, in  
18 particular going onto the next page, Mr. Puig says  
19 this:

20                "Two weeks ago Judge Polster ordered remand  
21 in two Missouri cases brought by Missouri counties  
22 that were removed to federal court on the basis of  
23 federal question jurisdiction that had some unique  
24 issues. So this idea that he's just sitting  
25 there --"

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1                   And then Judge Browning intervened. The Judge said:

2                   "What were the circumstances of those cases?

3                   What caused him to send those back to state  
4                   court?"

5                   "MR. PUIG: The state court actually reached  
6                   out to the MDL in that case and said, 'We have  
7                   these other cases that are pending.'"

8                   Judge Browning: "'We don't have enough work?  
9                   We want some other cases?'"

10                  Then Mr. Puig said -- and I want you to listen to  
11                  this carefully, Your Honor. I know you do always, but --

12                  THE COURT: Just to make sure, because I'm looking at  
13                  the transcript, which page are you on?

14                  MR. POUND: I'm on Page 82. No, now Page 83.

15                  THE COURT: Thank you.

16                  MR. POUND: I'm sorry, I should have said that.

17                  So the Judge says: "'We don't have enough work? We  
18                  want some other cases?'" I imagine there was some laughter in  
19                  the courtroom at that point.

20                  "MR. PUIG: I was shocked. I was shocked.

21                  But the state court actually reached out and said,  
22                  'We'd really love it if you'd address these two  
23                  remand motions, because we think these cases  
24                  belong in a coordinated proceeding down with us.'"

25                  Now I'll stop reading at that point to make what I

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1 hope is an obvious point to you. The kickoff point for  
2 Ms. Saucer's request to you, as I understand her request, is  
3 that she would be sort of a scrivener for you and write a  
4 letter for you to sign and send on to Judge Polster. And the  
5 kickoff point that she uses is that Mr. Puig advised Judge  
6 Browning that the appropriate procedure, I think her word was  
7 the proper procedure in a situation like this, where a motion  
8 to remand has been filed and has not yet been ruled on, but is  
9 pending, is for the Judge in the state court who used to have  
10 the case, but who has lost jurisdiction, should write a letter  
11 to the Judge; in this instance, Judge Polster.

12 Now, that is absolutely incorrect, as you've just  
13 seen. Mr. Puig not only did not recommend that course of  
14 action, but he said he was shocked, and to make his point, he  
15 said it twice. And it is shocking. I mean, just to call a  
16 spade a spade, what we're talking about here is a letter to be  
17 sent by a state court judge who once had a given case, but the  
18 case has been removed, to the judge who now has the case,  
19 taking on an advocate's role, doing the bidding of one of the  
20 parties in the case. The plaintiff in this case would like the  
21 case to be remanded, but the defendants don't think it should  
22 be remanded. That's an issue that's going to have to be  
23 decided by Judge Polster, and will be decided by him.

24 For this Court to write a letter, no matter how  
25 carefully the wording might be, the very fact of the letter

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1 would communicate not only to Judge Polster, but to anyone who  
2 got wind of it, including newspapers, the public, that our  
3 cherished -- and I don't mean to sound flowery here, I'm being  
4 sincere -- our cherished concept of judicial independence would  
5 be violated. You'd have a situation where one judge who  
6 doesn't have a case is writing a letter to another judge who  
7 does have a case, urging that that judge do something  
8 procedurally that one of the parties to the case would like to  
9 have done and the other parties feel would be inappropriate.

10 We think in addition to the fact that this Court does  
11 not have jurisdiction, to write a letter like that would be to  
12 violate that principle of judicial independence and neutrality.  
13 So that's an important point for us to make, and I suggest for  
14 the Court to ponder.

15 The real point here, though, again, or one of the  
16 most basic points, and I need to emphasize it a bit, is we all  
17 must remember that once a case is removed to federal court, the  
18 state court loses jurisdiction unless and until the case is  
19 remanded. The decision on a motion to remand is for the Court  
20 having jurisdiction, the federal court. That decision is based  
21 on the law. It's not based on who can write the nicest letter  
22 or who would like something to happen for strategic or for  
23 tactical reasons. No one seems to be denying that here, or at  
24 least Ms. Saucer, I didn't hear her deny it. As a matter of  
25 fact, I heard her say this is a very unusual thing she's

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1 suggesting the Court do, and in that, I took it as meaning that  
2 she agrees that this Court lacks jurisdiction.

3 Now, there's something else that needs to be pointed  
4 out. As you will recall, Judge Polster, when he entered his  
5 order in the case in the Northern District of Ohio that we're  
6 talking about here, the one where he talked about the letters  
7 he received from the judges in Missouri and Pennsylvania, at  
8 the very end, and I think you've seen this, on Page 3 of that  
9 order, he rung off this way: "As the Court stated at the  
10 June 19th status conference, I will not entertain additional  
11 requests of this nature." That is something, in my opinion,  
12 that counsel should have shared with you when she wrote her  
13 initial letter to you asking you to write your letter, or to  
14 write a letter to Judge Polster. It would have been good, I  
15 think, and more thorough had she alerted you or warned you that  
16 Judge Polster has said he will not entertain letters of this  
17 type any further.

18 Now, you might ask, why won't he do that? Now, he  
19 didn't say it, but I think we all know why, because such  
20 letters represent a violation of the principle of judicial  
21 independence. How would the Bar and the public perceive our  
22 judiciary if, say, Judge Brown were to try to influence  
23 Judge Smith on a ruling in a case entrusted exclusively to  
24 Judge Smith? Judge, it's just a breathtakingly bad idea here  
25 for all the obvious reasons.

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1                 This morning I came in and looked, I just looked up  
2         to see if the Code of Judicial Conduct has anything to say  
3         about this, and I found, for example, Rule 102, 21-102. It's a  
4         quick one sentence, but it says a lot. "A Judge shall act at  
5         all times in a manner that promotes public confidence in the  
6         independence, integrity, and impartiality of the judiciary and  
7         shall avoid impropriety and the appearance of impropriety."

8                 And then I looked at Rule 21-210 of the Code of  
9         Judicial Conduct, Subpart A, which says: "A Judge shall not  
10       make any public statement that might reasonably be expected to  
11       affect the outcome or impair the fairness of a matter pending  
12       or impending" -- whatever that means -- "in any court, or make  
13       any nonpublic statement that might substantially interfere with  
14       a fair trial or hearing."

15               It kind of surprised me that the Rule went so far as  
16       to anticipate a situation where a Judge might make some sort of  
17       public statement in a case that is actually before him that  
18       indicates that he favors one side or the other, and then went  
19       on to anticipate that maybe in some instances Judge A might  
20       actually try to influence Judge B in a case before Judge B.  
21       And both things are included in what's forbidden in the Rule.

22               So what we've got here, to wrap it up, is this Court  
23       lacks jurisdiction. I think metaphysically we're not even  
24       having this conversation, because it's more like we're a group  
25       of lawyers assembled in a field someplace discussing the law.

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1 You don't have a case in front of you, and so we have nothing,  
2 no jurisdiction here.

3 At any rate, to me the telling point, even the more  
4 telling point, the less technical one, is as I said, it's a  
5 remarkably bad idea. It would set a terrible precedent,  
6 practical, and if I might say, a legal precedent for the  
7 reasons that you, yourself, alluded to as you kicked off this  
8 phone call we're all having with each other. So we would urge  
9 you in the strongest possible way to let this cup pass from  
10 your lips. It's a dangerous cup for all of the obvious  
11 reasons.

12 Judge Polster is a good Judge. He's got the case  
13 before him, and he's got a motion to remand all teed up for him  
14 to rule on. There's no reason in the world to believe he won't  
15 rule on it. And you've got enough to do, if you don't mind my  
16 saying so. As Judge Browning suggested, you don't really need  
17 to be going around the country asking other judges to send  
18 cases to you. That's our position.

19 THE COURT: Thank you.

20 MS. SAUCER: May I respond, Your Honor?

21 THE COURT: Well, just a moment. Let me see if  
22 there's anybody else that wishes to add something briefly to  
23 Mr. Pound's statement, and then we'll go back to Ms. Saucer.

24 MR. MALDENGEN: Your Honor, this is Larry Maldengen,  
25 and my co-counsel, Nathan Shafroth, is on the phone. We are

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1 making a special appearance on behalf of McKesson Corporation  
2 and McKesson Medical-Surgical.

3 We filed yesterday limited entries of appearance on  
4 behalf of our clients and a number of other clients. I don't  
5 think that we need to re-state what was laid out in our special  
6 appearance. I would ask that the Court truly focus on the  
7 jurisdictional issue, that it's clear that this Court has no  
8 jurisdiction, and as Mr. Pound points out, even if one letter  
9 were to be written, which would be inappropriate, Judge Polster  
10 is not going to listen to it. So I think we are wasting Your  
11 Honor's time under these circumstances.

12 THE COURT: All right, thank you.

13 MR. BAKER: Your Honor, Mark Baker, especially  
14 appearing for Walgreens. I believe my colleague, Les Houtz,  
15 from the firm of Bartlit Beck is on, as well.

16 I'm not going to rehash it, but writing a letter to  
17 Judge Polster when he said he doesn't want such requests coming  
18 in can't help but create the appearance of you taking sides on  
19 an issue that's in front of him. There's not a way to artfully  
20 enough draft that letter that doesn't convey exactly that.

21 And I would just note that Judge Browning, who was in  
22 a position to have the case, and actually had jurisdiction,  
23 ended his hearing in the City of Albuquerque case that the  
24 plaintiffs have relied on by saying that the best course for  
25 him to do in this circumstance was nothing and allow the MDL

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1 process to run its course, and that anything short of that  
2 would convey a taking of sides. He'd read Federal District  
3 Court orders where local judges had raised to rule on a remand  
4 issue to keep it out of the conditional transfer process and  
5 took the position that that flags the Judge taking sides in an  
6 inappropriate way.

7 I would just say that, going a step further, where  
8 you've had jurisdiction divested while the remand issues were  
9 considered, to reach in and write a letter over an order where  
10 Judge Polster says he doesn't want further such requests from  
11 local judges I think would be inappropriate and send the wrong  
12 signal in addition to being on a matter where you don't have  
13 jurisdiction.

14 THE COURT: All right, thank you. And I'll say, I'm  
15 sensing some overlap in the statements being made by the  
16 defendants at this point, so that I think I understand where  
17 they're coming from. Ms. Saucer, you can reply, and then we'll  
18 move on.

19 MS. SAUCER: Briefly, Your Honor. The first point  
20 made, I'm not trying to be an "scrivener" in my offer. I  
21 offered to submit a written statement because apparently  
22 there's a problem with the audio that the Court told me about,  
23 and on that topic I apologize for screaming my way through  
24 this.

25 Second, on the issue of Mr. Puig being shocked,

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1       shocked that remand was going on in the federal MDL  
2       establishment, yes, yes, that was in his statement. However,  
3       what is omitted is the why it was that Judge Browning was  
4       asking the questions that he asked. The reason why  
5       Judge Browning was asking those questions is because Endo's  
6       counsel, Mr. Puig, made a representation to him repeatedly that  
7       the statement that there was a moratorium on remand filings by  
8       counties and cities was false. And I'm quoting here from  
9       Pages 79 through 81 of the transcript. He said it was false,  
10      it was false and misleading, it was demonstrably false.

11           So this is not a topic that Endo's counsel asked  
12       about out of the blue. It was a topic that Endo's counsel put  
13       front and center by accusing me of basically lying. And so  
14       that's why Judge Browning was incredibly, perceivably asking,  
15       well, if this is false, give me examples of this happening.

16           Now, on the issue of we should have alerted the Court  
17       to something that Judge Polster said in docket entry  
18       2000-something, or whatever the docket entry is, I find that  
19       fascinating. The (inaudible), which is fine, except for when  
20       the defendants are winning and then after they win, they're  
21       changing the facts upon which they won in the first instance.  
22       The idea that I should have alerted you that Judge Polster  
23       allegedly said in docket entry whatever it is that he wasn't  
24       going to consider this anymore, allegedly he said that in July,  
25       well, opposing counsel just read for you the representation

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1 opposing counsel made in court that they won on that  
2 Judge Polster had done it two weeks ago, which was January of  
3 this year. So they're complaining that I didn't alert you to  
4 an order by Judge Polster showing that what they said to  
5 Judge Browning wasn't true. I find that to be remarkable.

6 And finally, on this threat, or whatever it is,  
7 whatever counsel meant by quoting judicial canons, I'd like to  
8 talk about that. There's an inference here that Judge Rex  
9 Burlison has done something wrong. There's an inference here  
10 that Judge Barry Dozor did something wrong. Our point is that  
11 when those letters were written by these judges, Judge Polster  
12 sent the cases back. He won't let me even file anything on  
13 behalf of my client. I tried. But these two judges wrote  
14 those letters and it worked, and Judge Polster sent the cases  
15 back.

16 And one thing that's interesting about these  
17 citations or quotations of judicial rules, I find that to be  
18 extraordinarily curious because one of the opening phrases in  
19 -- there's a reference in Judge Burlison's letter that he  
20 discussed this with Judge Polster. So I wonder if this is some  
21 veiled threat about Judge Polster. I don't know.

22 But these are the facts that the City of Santa Fe has  
23 to contend with. The City of Santa Fe is a high-intensity drug  
24 trafficking area. The City of Santa Fe is even harder hit now  
25 because it relies on tourism, and that's dried up. It's not

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1 because of the population numbers. It's not a (inaudible). So  
2 all of the revenue harm is even worse now, and the City is  
3 doing the only thing the federal courts will allow us to do,  
4 which is the thing that Endo's counsel itself said was, or  
5 suggested was an option in their arguments, which they won.  
6 And that is, this letter writing.

7 If the Court writes a letter to say, I've been asked  
8 to write a letter -- there was a Pennsylvania letter, and  
9 Judge Polster remanded. Those are facts. That letter was  
10 written, and after that letter, those Pennsylvania cases were  
11 sent back. So whether we should be writing letters or  
12 something else should happen, it worked. Those clients got  
13 their cases back in the court of subject matter jurisdiction.  
14 Same as Missouri. That worked. Is that how it should work? I  
15 don't know. I don't control that. The fact is, that's the  
16 only option left to us, and that's what was suggested by Endo's  
17 counsel in arguments that they're now directly contradicting.

18 They won on those representations. Therefore, we ask  
19 that they be held to the things that they said in a different  
20 court, the things that they told Judge Browning.

21 THE COURT: All right, thank you very much.

22 First of all, I'd say I very much appreciate counsel  
23 participating in this call, particularly in the, I guess maybe  
24 most kindly one would say, ambiguous posture, because I  
25 understand that ambiguity may exist largely in my mind and on

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1 my e-mail, but in the rest of the universe be fairly clear, I  
2 think, that Judge Polster at the moment has jurisdiction of  
3 this matter.

4 That being said, I was being asked to do something  
5 that I have not been asked to do before in a procedural posture  
6 that I have not dealt with before, and rather than sit in my  
7 office and play judicial oracle, having a hearing where I could  
8 benefit from the input of counsel seemed like a far smarter way  
9 to go. So I guess it's admitting, perhaps, that I have  
10 limitations as some of these judges in the other states that  
11 wrote letters don't have that necessitated my request in this  
12 regard, but I very much appreciate you all participating and  
13 providing your input.

14 At this time, I am not going to write a letter to  
15 Judge Polster. We will see what Judge Polster decides when he  
16 decides it with respect to remand or no remand. It is not  
17 because I don't understand and appreciate the problems of my  
18 community, I think I do, or at least I strive to, but rather it  
19 is because of my understandings of the process and my sense of  
20 what is appropriate for me.

21 Frankly, I could see myself raising as many issues  
22 down the road in this litigation if Judge Polster were to  
23 remand it to me by essentially writing an informal motion of  
24 remand that is desired by the plaintiffs and objected to by the  
25 defendants. I can see that causing as many or more problems

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1 down the road in this litigation if it's remanded than not  
2 doing so will do. One is going to result potentially in the  
3 passage of time, the other one I think could result in me  
4 appropriately being removed from the case and/or other things  
5 by virtue of having created an appearance that I'm not neutral  
6 and that I'm not being fair, and that is certainly something I  
7 seek to avoid because I want to be those things and strive to  
8 be.

9 So I'm not going to write a letter. I will say in  
10 the future -- I would like to say one more thing, too, which  
11 is, on the basis of what was submitted to me, which includes  
12 the transcript in the federal hearing that was held in  
13 Albuquerque, that I did review, I've not come away from this  
14 hearing and this exchange, or maybe nonhearing gathering in a  
15 field, whatever we call it, I'm not coming away from this  
16 interaction with counsel feeling as if any one side has acted  
17 inappropriately in asking me to do this. I just feel like it  
18 would be inappropriate for me to do it. So I just want  
19 everyone to know going forward, that's where I'm coming from in  
20 this matter and no one should be concerned if it is remanded  
21 that I've come away with any other impression of counsel,  
22 whether it be counsel being worried that somehow I think canons  
23 being read to me indicate that I'm not aware of them and don't  
24 strive to comply with them, or counsel leaving thinking that  
25 I've been asked to write a letter that I shouldn't be. I just

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1 come away thinking that in my opinion, and as the person being  
2 asked to write something, that that would not be appropriate  
3 for me to do at this time.

4 So, we'll see what Judge Polster does and when  
5 Judge Polster does it, and depending on his decision, you all  
6 will certainly be welcome here in this court to litigate this  
7 matter. And I will also say, too, that I don't know what  
8 Judge Polster is dealing with in the current COVID  
9 circumstance. I will confess that in this court we are  
10 struggling with ways to safely and responsibly hold jury trials  
11 and come up with new and unique procedural, and even more I  
12 guess difficult to overcome spatial arrangements than we've  
13 normally had. So I will say that does add to both my  
14 understanding as to why this might be taking a little while,  
15 and also probably reduces my confidence that I could represent  
16 to Judge Polster that, oh, yes, I'll get this thing in front of  
17 a jury next week. I would struggle mightily in terms of how to  
18 represent that, because we are all confronting this in the  
19 judiciary, as you are all, as well.

20 So for now, I guess I think it's appropriate to  
21 adjourn the meeting in the field, but know that if this comes  
22 back, you should all feel comfortable with it doing so. Notify  
23 me promptly, and we will move this forward on my docket and get  
24 it tried as promptly as we can.

25 Is there -- given that I'm being told that I really

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1 could never have accomplished anything this morning, I say with  
2 more irony than usual, is there anything else we can address in  
3 this matter this morning?

4               Okay, I'm seeing Ms. Saucer indicating to the  
5 negative, and noting that I have not heard a single counsel  
6 from the defendants state that I could have done anything  
7 anyway, I'm going to take that as we're adjourned and you're  
8 dismissed.

9               (Court in recess at 11:48 A.M.)

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1 STATE OF NEW MEXICO  
2 COUNTY OF SANTA FE  
3 FIRST JUDICIAL DISTRICT COURT

4 No. D-101-CV-2019-01809

5 CITY OF SANTA FE,

6 Plaintiff,

7 vs.

TELEPHONIC STATUS CONFERENCE  
WEDNESDAY, MAY 15, 2020

8 PURDUE PHARMA, L.P., et al.

9 Defendants.

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11 C E R T I F I C A T E

12 I, MARY K. LOUGHAN, CRR, CRC, RPR, CCR #65, DO  
13 HEREBY CERTIFY that I did, in stenographic shorthand,  
14 transcribe the audio taped proceedings of the Telephonic Status  
15 Conference set forth herein, and the foregoing pages are a true  
16 and correct transcription to the best of my ability. The tape  
17 was of fair quality.

18 I FURTHER CERTIFY that I am neither employed by nor  
19 related to nor contracted with (unless excepted by the rules)  
20 any of the parties or attorneys in this matter, and that I have  
21 no interest whatsoever in the final disposition of this matter.

---

22

23

24 Mary K. Loughran, CRR, CRC, RPR  
Certified Court Reporter #65  
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